HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No. 15913 of 1991

Between:

Pachinilam Venkataramana and

others .. Petitioners

AND

The Special Tahsildar, Land Acquisition

For Essar Gujarat Ltd. Kakinada and

another ..Respondents.

Counsel for the Petitioners: None

Counsel for the Respondent: Govt. Pleader for Land Acquisition

Dated: March 14, 2006

ORDER:

Per G.S.Singhvi, C.J.

In this petition, the petitioners prayed for issuance of a mandamus to the Special Tahsildar, Land Acquisition, Kakinada (respondent No.1) to make reference to the competent Civil Court under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act').

Although, no one has appeared for the petitioners, we do not consider it proper to dismiss the petition in default or defer its adjudication on merits, because the matter has remained pending for the last almost 15 years.

The petitioners owned different parcels of land in Tammavaram village, Kakinada Mandal, East Godavari District. Their lands were acquired by the Government of Andhra Pradesh for M/s Essar Gujarat Limited by invoking Section 17(4) of the Act. 80 per cent of the compensation was offered to the petitioners at the rate of Rs.65,000/- per acre some time in October/November, 1990. They accepted the compensation under protest. Thereafter, vide Award Nos. 4 and 5 of 1991, respondent No.1 determined the remaining 20 per cent of the compensation. Immediately after receiving the compensation, the petitioners submitted application for making reference under Section 18 of the Act, but the concerned authority did not respond to their request necessitating filing of this petition.

It is borne out from the record that the adjudication of the writ petition was deferred in view of the pendency of the reference made in Writ Appeal No. 1752 of 2001 to a larger Bench.

Learned Government Pleader very fairly says that the reference made to the Full Bench has been answered on
September 19, 2003. He also concedes that the petitioners case is covered by the Judgment of the Full Bench.

We have gone through the Judgment of the Full Bench, the operative part of which reads as under:

> "In the view we have taken, we answer the reference holding that in the absence of any manner of protest having been specified in the Act and the time when protest is to be lodged, act of filing of an application seeking reference to Civil Court within the period of limitation prescribed under Section 18 of the Act will impliedly infer that the claimant/person interested had accepted the amount with protest. Not expressly lodging protest at the time of receiving amount in such circumstance would not amount to waiver of the right to seek reference under Section 18 of the Act."

It is an undisputed position that the petitioners had filed application for reference within the period of limitation, therefore, their case is squarely covered by the answer given by the Full Bench.

Consequently the writ petition is allowed and the respondent is directed to make reference under Section 18 of the Act.

The needful be done within one month from the date of receipt of a copy of this order.

G.S.SINGHVI, C.J.

March 14, 2006

G.BHAVANI PRASAD, J.

Note:

The Registry is directed to inform the petitioners that their writ petition has been allowed vide order of today and they may pursue their cause before the respondent and thereafter before the competent Civil Court.

/B.O/

GRR